1948.

File No. Bom. (Enlargmen & area & Alt. of Boundries) II

Legal Deptt 48

B **BRANCH**

Subject:— Rules and Notifications under the Bombay Enlargement of area and alteration of Boundries Orders 1947

D. 22 (F)

File No. Bom. (Enlg. of area & Alt. of Boundries) II/48

Gen. 194 a.

148-B

Office of the E.L.A.

The points which arise in this file are not clearly stated. The fmt first point which seems to arise for consideration is whether the Acts.e.g. the Bombay Abkari Act, 1878, and the Bombay District Police Act, 1890, which were in force in the Dangs immediately before the coming into force of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, continue to be in force in the District of Dangs. The s cond point for consideration is whether all the Acts in force in the Province of Bombay will automatically apply to the District of Dangs on its merging in the Province. If not, what action will have to be taken by the Government. The third point for consideration is whether the Central Acts, e.g. the Opium Act, the Indian Stamp Act, the Court-fees Act and the Land Acquisition Act, will automatically apply to the District of Dangs.

2. It is not stated in these papers under what authority the laws of British India which were in force in the Dangs immediately before the coming into force of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, were applied to the Dangs, and whether they a were applied with any modifications or exceptions. Whether they were applied under any statutory authority or not, it appears that on the inclusion of the area known as Dangs in the territories of the Dominion of India and on their forming part of the Province on 19th January 1948, the date on which the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, came in force, the laws, which were in force in the Dangs, ceased in the absence of a saving provision to apply to the District of Dangs. Article 5 of the Bombay (Enlargement of Area and Alteration of Boundaries) Order provides that Dangs

shall be for the time being form a sp separate district of the Province of Bombay and be administered accordingly. That Article further gives power to the Governor to extend to the area of Dangs the appli-cation of any laws for the time being in force in the Province or any part thereof . Paragraph (3) of the Article makes provision for applying the laws even retrodpectively. It would , therefore, appear that none of the laws in force in the Provision for-applying-the-laws-even-retrospectively. including the Central Acts referred to apply automatically to the District of referred to apply automatically to the District of Dangs and that to apply any of them to the said district it will be necessary to issue an order under paragraph (2) of Article 5. To leave no vacuum it may be necessary to extend the application of the laws even retrospectively, that is, with effect from 19th January 1948. It will, therefore, be necessary for the Revenue Department to select the laws which it considers necessary apply to the District of Dangs and then taken immediate step for the issue of an order under Article 5 of the Order for their application to the said district.

O.O. Sd/-P.M.Lad
10-2

Remembrancer of Legal Affairs.

U.R. to R.D.No. 1479, dated the 11th February 1948.

S.A.K.
8-6
5 copies

Revenue Department.

Bombay Castle, February 1948.

ORDER.

No. 1-Whereas it is necessary * expedient to extend to the district of Dangs the Bombay Land Revenue Code, 1879 (Bom. V of 1879);

* R.D. to decide which word to use.

No. therefore, in exercise of the powers conferred by paragraph (2) of Article 3 of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, the Governor of Bombay is hereby pleased to direct that the said Bombay Land Revenue Code, 1879 (Bom. V of 1879), shall apply to the district of Dangs.

This order shall come into force with effect from.....??.....

Here insert a date not earlier than 19-1-1948.

By order of the Governor of Bombay,

Secretary to Government.

S.A.K.
8-6
4 copies

Office of the R.L.A.

A revised draft notification is sent herewith.

2. It is for the Revenue Department to consider whe the order should be made with retrospective effect, as provided for in paragraph 3 of Article 5 of the Bomba (Enlargement of Area and Alteration of Boundaries) Orde 1947.

O.O. 88/-P.H.Ind
10-2

Remembrancer of Legal Affairs.

U.O. to R.D.No. 1455, dated the 10th February 1948.

S.A.K.
8-6
4 copies

Office of the B.L.A.

If the intention is to appoint an administrator for the new district of Dangs who should be in charge of the executive administrationof the district, it would be first necessary for the Governor to make an order under Article 5 of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, making provision for the appointment of such officer and then make an order thereunder for the appointment of Mr. Desai.. It appears that Mr. Desai actually carried on the duties of the Administrator with effect from 1st March 1948. The order making provision for the appointment of the Administrator with effect may, therefore, be given retrospective effect so as to operate from 1st March 19 1948. Paragraph (3) of Article 5 expressly provides for giving retrospective effect to an order made under the Article, and therefore, there will be no legal o-bjection to the course proposed. Necessary draft orders are prepared and sent herewith.

C.C. Sd/-P.N.Lal
6-4

Remembrancer of Legal Affairs.

U.O. to B.D.No. 3347, dated the 7th April 1948.

S.A.K.
8-4
4 copies

Revenue Department.

Bombay Castle, April 1948.

ORDER.

No. 1-In exercise of the powers conferred by paragraph (2) of Article 5 of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, the Governor of Bombay is hereby pleased to make the following orders, namely:-

The Provincial Government may appoint one or more Officers to be designated the Administrator, Dangs District, who shall, subject to the general supervision and control of the Provincial Government, be incharge of the executive administration of the district of Dangs or such area of the said district as the Provincial Government may determine.

This Order shall be deemed to have come into force on the 1st day of March 1948.

By order of the Governor of Bombay,

Secretary to Government.

Bombay Castle, April 1948.

NOTIFICATION.

No. 1- In pursuance of the provisions of Government Order No. dated , the Government of Bombay is pleased to appoint with effect from the 1st day of March 1948, Mr. B.K.Desai to be the Administrator who shall be in charge of the executive administration of the district of Dangs.

Byorder of the Governor of Bombay

Secretary to Government.

S.A.I.
6-6
4 copies

Office of the H.L.A.

It is not clear from these papers whether after the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, came into force, the Code of Criminal Procedure, 1898, was applied to the District of Dangs as contemplated by the said Order. If the Code has not been applied it will be necessary to apply the Code to the District of Dangs, and then proceed to take action under section 7 thereof. Two courses are then open to Government. They may either make the District of Dangs a separate Sessions Division or alter the limits of the present sessions division of Surat so as to include therein the limits of the District of Dangs. If Government decide upon the latter course it will be competent for the Sessions Judge, Surat, to hear cases committed to sessions in the Dangs. If, however, Government decide that the District of Dangs should be a separate Session Division it would be necessary to consider the question of appointing under sub-section (1) of section 9 of the Code a Sessions Judge for the Court of Session established for the Sessions Division of Dangs or of appointing under sub-section (4) of section 9 the Sessions Judge of Surat to be the Additional Sessions Judge of the Sessions Division of Dangs. In view of the position stated in the Collector's letter of 13-5-48 the last alternative course seems to be indicated.

O.O. Sd/- P.H.Lad
4-6

Remembrancer of Legal Affairs.

O.*. to H.D.No. 5330, dated the 4th June 1948.

S.A.K.
5-6
4 copies

Office of the R.L.A.

Two revised notifications in place of these at pages 75 and 107 are sent herewith.

It is true that article 5(b) of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, provides that any order made under this Order may be made so as to be retrospective to any date not earlier than the date of the commencement of that Order i.e. 19th January 1948. But the term "order" has the meaning attached to it under the said Article 5 i.e. it means an order to be made by the Governor in virtue of the said Article 5 . The notifications in question are to be issued by the Provincial Government under the Bombay Land Revenue Code, 1879, and not under article 5 and cannot therefore be given any retrospective effect.

C.C. Sd/-P.M.Lad
12-4

Remembrancer of Legal Affairs.

U.D. to R.D.No. 173 -Genl dated the 13th April 1948.

S.A.E.
8-6
4 copies

NOTIFICATION.

Revenue Department,
Bombay Castle, April 1948.

Bombay Land Revenue Code. 1879.

In exercise of the powers conferred by section 4 of the Bombay Land Revenue Code, 1879 (Bom. V. of 1879), the Government of Bombay is pleased to direct that the Districts of Thana which under the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, is formed a separate district of the Province of Bombay shall on and after .....form part of the territories under the general control of the Commissioner, Northern Division.

By order of the Governor of Bombay,

Secretary to Government.

S.A.K.
5-6
4 copies

NOTIFICATION. -3

Revenue Department.,

Bombay Castle, April 1945.

Bombay Land Revenue Code. 1879.

No. 6775/45(a):- In exercise of the powers conferred by section 7 of the Bombay Land Revenue Code. 1879. (Bom. V of 1879.) the Government of Bombay is pleased to direct that the district of Dhuga which under the Bombay (Enlargement of Area and Alteration of Boundaries) Order. 1947. is formed a separate district of the Province of Bombay shall be a district which shall consist of a single taluka consisting of the villages specified in the Schedule hereto appended.

SCHEDULE I.

[Here enter A-A at pages 93-101 ante.]

By order of the Governor of Bomb

Secretary to Government.

S.A.K.
E-5
4 copies

A revised draft order in place of the draft Order at page 351 is sent herewith.

Although it is proposed to apply the Bombay Land Revenue Code and other enactments in force in the Province of Bombay to the Dangs District with effect from 19th January 1948, it will not be possible to issue any fresh notifications under those enactments with effect from that date. The notifications will take effect from the date they are issued. Revised notifications in place of the draft notifications and at pages 329, 333 and 347 are sent herewith. The notifications under the Code of Criminal Procedure should be issued after the draft notification including the district of Dangs in the Sessions division of Surat is issued. The draft of this notification has been sent to the Home Department with this office No. 6007, dated the 26th June 1948.

It appears from para. 3 of H.D. note at pp. 315-316 ante that even after the merger of the Dangs States in the Province of Bombay on 19th January 1948 Col. Dabholkar, who was the Dewan and President of the Dangs Executive Council, continued to administer these States in that capacity up to 29th February 1948. Mr. R.K.Desai, it appears, took over as Collector of the Dangs District from 1st March 1948, but no notification or order was issued by Government appointing him as the Collector of Dangs. It appears from the Revenue Department note that from that date Mr. Desai became the executive authority in the Dangs district. To give legal cover to the acts done by Col. Dabholkar and Mr. R.K.Desai during the period from 19th January 1948 to 29th February 1948 and the 1st of March 1948 till the date of a proper notification under the Land Revenue Code appointing Mr. Desai as the Collector, it will be necessary to issue an order as suggested in H.L.A's opinion No. 3347, dated the 7th April 1948. The draft order sent along with H.L.A.'s opinion should be brought into force with effect from 19th January 1948 and then notifications should be

H.A.K.
5-6
4 copies

issued in pursuance of that order appointing Col. Dabholkar and Mr. B.K.Desai to be the Administrators in-charge of the executive administration of the district of Dangs. Necessary orders and notifications are appended herewith. Since the intention is to appoint Mr. Desai as the Collector of Dangs, a notification under section 5 appointing him as the Collector may also be issued. A draft of this notification is also sent herewith .

O.O. Sd/- P.R.Dharmadhikar.
3-7

Additional Secretary to Government

U.O. to R.D.No. 355-Genl. dated the 3rd July 1948.

S.A.K.
8-6
4 copies

ORDER.

REVENUE DEPARTMENT.

BOMBAY CASTLE, JULY 1948.

No. 6715/55(A).- Orders under Article 5 of the Bombay (Enlargement of Area and Alterations of Boundaries) Order, 1947, issued by the Governor General in the Ministry of States on the 19th day of January 1948 under section 290 of the Government of India Act, 1935, the Governor of Bombay has been authorised to make an order by a notification in the official Gazette providing for the administration of the area known as Kutch as a separate district of the Province of Bombay.

Now, therefore, in exercise of the powers conferred on him by Article 5 of the said Order and of all other powers enabling him in this behalf, the Governor of Bombay is pleased to make the following Order with effect from the 19th day of January 1948.:-

All enactments, and all notifications, orders, schemes, rules and bye-laws issued, made, or prescribed under such enactments and in force in the Province of Bombay, shall extend to and be in force in the District of Kutch.

Provided that nothing herein shall affect-

(a) any right, title, obligation, liability, already acquired, accrued or incurred, before the 19th January 1948;

(b) any remedy or proceeding in respect of such right, title, obligation or liability; or

(c) anything done in the course of any pending proceeding in any court on that aforesaid date;

and any such remedy or proceeding may be enforced, instituted or continued in so far as the enforcement, institution or continuance is not inconsistent with any of the provisions of the law in force in the said Province on the 19th January 1948.

By order of the Governor of Bombay,

V.K.SARDESAI,

Secretary to Government.

NOTIFICATION.

Revenue Department.

Bombay Castle. 1948.

Bombay Land Revenue Code, 1879.

In exercise of the powers conferred by section 4 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), the Government of Bombay is pleased to direct that the District of Dhulia which under the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, is formed a separate district of the Province of Bombay shall on and after..... form part of the territories under the general control of the Commissioner, Northern Division.

By order of the Governor of Bombay,

Secretary to Government.

S.A.K.
8-6
4 copies

NOTIFICATION.

Revenue Department.
Bombay Castle, 1948.

Bombay Land Revenue Code, 1879.

No. :- In exercise of the powers conferred by section 7 of the Bombay Land Revenue Code 1879 (Bom. V. of 1879), the Government of Bombay is pleased to direct that a the district of Dhulia which under a the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, is formed a separate district of the Province of Bombay shall be a district which shall consist of a single taluka consisting of the villages specified in the Schedule hereto appended.

SCHEDULE A.

[Here enter A to A at pages 337-345 ante]

By order of the Governor of Bombay,

Secretary to Government.

B.A.C.
8-6
4 copies

NOTIFICATION.

Home Department.

Bombay Castle. 1945.

Criminal Procedure Code, 1898 (V of 1898).

No. 6775/45(d) :- In exercise of the powers conferred by sub-section (1) of section 10 of the Code of Criminal Procedure, 1898 (V of 1898), and in supersession of all previous notifications on the subject the Government of Bombay is pleased to appoint the Collector of Dangs District to be District Magistrate for the said District.

By order of the Governor of Bombay,

D.S.RAHILE,

Secretary to the Government of Bombay,
Home Department.

No. 6775/45(e):- In exercise of the powers conferred by sub-section (1) of section 12 of the Code of Criminal Procedure, 1898 (V of 1898), the Government of Bombay is pleased to appoint the Mamlatdar, Dangs, to be a Magistrate of the Second Class in the District of Dangs.

By order of the Governor of Bombay,

D.S.RAHILE,

Secretary to the Government of Bombay,

Home Department.

To be published in Part IV-A of the Bombay Government Gazette to be returned with 60 copies of the notification.

For Secretary to the Government of Bombay
Home Department.

S.A.K.
8-6
4 copies

Revenue Department.

Bombay Castle, July 1948.

ORDER.

No. In exercise of the powers conferred by paragraph (1) of Article 3 of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, the Governmnm of Bombay is hereby pleased to make the following order, namely :-

"The Provincial Government may direct that one or more Officers shall be deemed to have been appointed as Administrators, Dangs District, and that the said Officers shall, subject to the general supervision and control of the Provincial Government, be deemed to have been incharge of the executive xxxxxx administration of the district of Dangs or such area of the said district as the Provincial Government may determine. This Order shall be deemed to have come into force on the 19th day of January 1948".

By order of the Governor of Bombay.

Secretary to Government

S.A.K.
4-5
4 copies

NOTIFICATION.

Revenue Department.

Bombay Castle, July 1948.

No. :- In pursuance of the provisions of Government Order No. dated the the Government of Bombay is pleased to direct with effect from the 19th day of January 1948 till the 29th day of February 1948 (both days inclusive) Col. A.Y . Dabholkar and with effect from the 1st day of March 1948 till (both days inclusive) Mr. R.K.Desai shall respectively be deemed to have been appointed as the Administrators and to have been in charge of the executive administration of the district of Dangs.

Here insert the date of the notification to be issued under section 5 of L.R.Code.

By order of the Governor of Bombay.

Secretary to Government.

S.A.K.
5-6
4 copies

NOTIFICATION.

Revenue Department.

Bombay Castle, July 1945.

No . 1- In exercise of the powers conferred by section 5 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), the Government of Bombay is pleased to appoint Mr. R.K.Desai, City Magistrate, Ahmedabad, to be the Collector of the District of Dangs/

Bombay Land Revenue Code, 1879.

By order of the Governor of Bombay.

Secretary to Government .

S.A.K.
5-6
4 copies

Legal Department.

This relates to a settlement which was arrived at between the Thakore of Uchad State and the Secretary, Gujarat Rajasthan Praja Parishad. The document is signed by the Thakore himself and the Secretary of the Parishad before the Deputy Regional Commissioner for the Gujarat States Region. The document is styled "Proclamatic or "Notification". It is not clear what powers the Thakore possessed over his State or Estate.
In any case it appears that the proclamation was issued by the Thakore under whatever powers were left in him as a ruler by which his consent to the merger was necessary or required and by which he could agree to restore the lands e forfeited or confiscated and could also agree to certain other concessions in favour of cultivators. The proclamation therefore was a firman or order issued by the ruler and had the force of the law of the State or Estate. It came into force on 25th April 1948. The Uchad State formed part of the Revakantha Agency and was absorbed in the Province of Bombay by the Bombay Enlargement of Area and Alteration of Boundaries) Order, 1948, dated the 4th June 1948. The firman is divided into seven paragraphs. Paragraph (1) relates to the date of commencement or the date of bringing the firman into operation. According to paragraph (2) the Thakore purports to accept the merger scheme. Paragraph (3) provides that no miscellaneous vera, legat or any kind, except the land revenue and local cess shall be recovered. Paragraph (4) relates to what appear to have been forfeited or confiscated lands. It is provided that the said lands should be restored in accordance with the decision of a Committee appointed of three persons, one of whom shall be a representative of the Gujarat Rajasthan Praja Parishad and the third a nominee appointed by the Deputy Regional Commissi a

Commissioner. Paragraph (5) provides that all trees standing on the khata lands were to belong to the Khatedars. Paragraph (6) provides that the ownership of the waste lands as well as forest trees will rest with theeState and paragraph (7) provides for the discontinuance of forced labour. The question for consideration is how to give effect to this Notificationor settlement after the State has been marged into the Province of Bombay.

2. It does not appear that any action is necessary in regard to any of the paragraphs, except paragraph (4). As stated above, paragraph (1) relates to the dates of the commencement. Para. (2), which provides for the acceptance of the merger scheme by the Thakore, has no effect now as the State has been marged in the Province of Bombay. As regards paragraph (3), as the Bombay Tenancy Act would ap-ply now to the State, no action seems necessary. In regard to paras. (5) and (6), the rights to trees between Khatedars and Government as also rights to waste lands and forest trees will now be governed by the Bombay Land Revenue Code under Forest Lands. No action will now be necessary in regard to para. (7), which relates to forced labour.

3. The only matter in respect of which any actionis required is in regard to paragraph (4) which relates to the restoration of forfeited or confiscated lands. Under paragraph 4 of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, power is given to the Governor of Bombay to extend to the added areas any laws for the time being in force in the Province of any part thereof. It it is true that the restoration of forfeited or confiscate lands will not fall under any of the provisions of the laws at present in force in the Province of Bombay. But clause (b) of the said paragraph xxxx provides that the Governor has power to make orders as appear to him necessary or expedient for removing difficulties arising in connection with the absorption of the added areas in the Province. It is provided that no order can be made under the xxxx Enlargement Order after the expiry of six months. It is therefore clear that if the merger.

S.A.K.
8-6/ 4

or absorption led to any difficulties in the administration of the territories absorbed, the power was given to the Governor to make order s. As need not go to the legislature for the purpose. If the estate of Umbad had not been absorbed in the Province of Bombay by the Enlargement Order, effect would have been given to the proclamation of 25th April 1945 which embodied a settlement arrived at between the Thakore on the one hand and the Secretary of the Gujarat Rajasthan Praja Parishad on the other. It is on account of the merger or absorption of the estate that it has become impossible to put that paragraph into effect. Although other paragraphs of the Notification are covered by the existing laws no effect can be given to para. 4 of the notification under the said laws. The Bombay Forfeited Land Restoration Act, 1938 has expired and is inapplicable. The words arising in connection with the absorption are comprehensive and wide enough to enable the Governor to make an order carrying into effect the provisions of para. 4 of the proclamation. They need not be restricted in point of time to the actual absorption (cf. Harris v. Crawford (1919) A.C. 717 per Lord Buckmaster L.C. at pp. 727-728 and 732 and Lord Finlay at p. 733). It can therefore be held that difficulties have arisen in giving effect to paragraph (4), in consequence of the merger or absorption of the estate into the Province of Bombay. It, therefore, appears that it would be competent to the Governor to issue an order under paragraph 4(b) of the Enlargement Order to give effect to paragraph (4) of the Notification which was issued by the Thakore. The order may be based on the lines of the Bombay Restoration of Forfeited Lands Act, 1938 . No. legislation is required for the purpose.

4. The papers may be forwarded to the P.& S.D. for necessary action.

C.C . Sd/-J.R.Dharandhar.
16-8
Additional Secretary to Government.

S.A.K.
8-8
4 copies

H.M. (Law)

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16/8/48